

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 2, 2004

IN RE:

PETITION FOR ARBITRATION OF CELLCO PARTNERSHIP
D/B/A VERIZON WIRELESS

DOCKET NO.
03-00585

PETITION FOR ARBITRATION OF BELL SOUTH MOBILITY
LLC; BELL SOUTH PERSONAL COMMUNICATIONS, LLC;
CHATTANOOGA MSA LIMITED PARTNERSHIP;
COLLECTIVELY D/B/A CINGULAR WIRELESS

PETITION FOR ARBITRATION OF AT&T WIRELESS PCS, LLC
D/B/A AT&T WIRELESS

PETITION FOR ARBITRATION OF T-MOBILE USA, INC.

PETITION FOR ARBITRATION OF SPRINT SPECTRUM L.P.
D/B/A SPRINT PCS

ORDER DENYING REQUEST TO ADD ISSUES
TO THE FINAL JOINT ISSUES MATRIX

This matter came before the Pre-Arbitration Officer upon the request of the Commercial Mobile Radio Services Providers ("CMRS Providers") to add four additional issues to the Final Joint Issues Matrix ("*Request*").¹ The *Request* is included in the cover letter filed with the Final Joint Issues Matrix by the CMRS Providers on July 26, 2004.² In the *Request*, the CMRS Providers seek to add three sub-issues to Issue 8 and an additional issue, Issue 19. Two of the proposed sub-issues to Issue 8 relate to the impact of the rural exemption on the appropriate pricing methodology, one proposed sub-issue to Issue 8 relates to the pricing methodology for direct connection and proposed Issue 19 relates to interim compensation.³ The CMRS Providers

¹ Letter from Henry Walker to Jean Stone (July 26, 2004)

² The Joint Issues Matrix filed by the CMRS Providers on July 26, 2004 contained the four additional issues

³ Letter from Henry Walker to Jean Stone, p 1 (July 26, 2004)

also state in the *Request* that the CMRS Providers have not been able to reach an agreement with the Rural Coalition of Small LECs and Cooperatives (“Coalition”) to add the issues and requested the Pre-Arbitration Officer’s “guidance” on the matter at the next status conference.⁴

Specifically, the CMRS Providers request the addition of the following:

Sub-issue 8(a): What is the appropriate pricing methodology for establishing a reciprocal compensation rate for the direct exchange of traffic?

Sub-issue 8(b): Does the rural exemption under 47 U.S.C. § 251(f)(1) affect the appropriate pricing methodology for establishing a reciprocal compensation rate for either the direct and/or indirect exchange of traffic?

Sub-issue 8(c): If so, what is the appropriate pricing methodology for establishing a reciprocal compensation rate for the direct and/or indirect exchange of traffic where the rural exemption under 47 U.S.C. § 251(f)(1) is applicable?

Issue 19: Are the interim arrangement obligations of 47 C.F.R. Section 51.715 applicable in this case?

At a Status Conference held on July 29, 2004, the Pre-Arbitration Officer heard arguments from the CMRS Providers and the Coalition addressing the *Request*. The CMRS Providers argued that because the rural exemption had been raised in the response filed by the Coalition, it had been set forth as an issue in the response. The CMRS Providers also argued that because the petitions dealt generically with the appropriate pricing regime for all reciprocal compensation, the issue of direct interconnection was set forth in the petition. Although only the word “indirect” had been used, the CMRS Providers submitted that was just an oversight. Finally, the CMRS Providers admitted that although proposed Issue 19 had been briefed in this Docket,⁵ the issue was not discussed in either the petitions or in the response to the petitions.

⁴ *Id*

The Coalition argued that the proposed issues were not set forth in the petition or in the response to the petition as required by statute, and therefore the *Request* should be denied.

Section 252(b)(4)(A) of the Telecommunications Act of 1996 reads:

(A) The State commission **shall limit** its consideration of any petition under paragraph (1) (and any response thereto) **to the issues set forth in the petition and in the response**, if any, filed under paragraph (3). (Emphasis added)⁶

Following arguments at the Status Conference, the request to add proposed Issue 19 was denied and the requests to add proposed sub-issues 8(a), (b) and (c) were taken under advisement by the Pre-Arbitration Officer.

Findings and Conclusions

After review of the petitions, the response, the authority cited by the CMRS Providers and a review of Section 252(b)(4)(A), the Pre-Arbitration Officer finds that proposed Sub-issues 8(a), 8(b) and 8(c) are not set forth in the petitions or response thereto within the meaning of Section 252(b)(4)(A). Therefore, the request to add proposed Sub-issues 8(a), 8(b) and 8(c) to the Final Joint Issues Matrix is denied.

As previously discussed, at the Status Conference on July 29, 2004 the CMRS Providers stated that although proposed Issue 19 had been briefed in this Docket, the issue was not set forth in either the petitions or in the response to the petitions. The Pre-Arbitration Officer finds that proposed Issue 19 is not set forth in the petitions or response thereto within the meaning of Section 252(b)(4)(A). Therefore, the request to add proposed Issue 19 to the Final Joint Issues Matrix is denied.


⁵ See *CMRS Providers' Position on Interim Compensation* (March 4, 2004)

⁶ 47 U.S.C. § 252(b)(4)(A).

The Pre-Arbitration Officer notes that the exclusion of these proposed issues from the Final Joint Issues Matrix does not prevent the Arbitration Panel from hearing any evidence it deems in its discretion to have probative value on the issues previously listed in the Joint Issues Matrix.⁷

IT IS THEREFORE ORDERED THAT:

1. The request of the CMRS Providers to add proposed Sub-issues 8(a), (b) and (c) and Issue 19 to the Final Joint Issues Matrix is denied.
2. The issues designated as Sub-issues 8(a), 8(b) and 8(c) and Issue 19 are stricken from the Final Joint Issues Matrix filed by the CMRS Providers on July 26, 2004.
3. Any motion for a continuance of the Arbitration Hearing in this Docket, scheduled to begin on August 9, 2004, shall be filed with the Authority **no later than 2:00 p.m. on August 2, 2004.**


Jean A. Stone, Counsel
as Pre-Arbitration Officer

⁷ See Tenn. Code Ann. § 65-2-109